

AMENDED IN SENATE AUGUST 9, 2010

AMENDED IN SENATE APRIL 5, 2010

AMENDED IN ASSEMBLY OCTOBER 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 558

Introduced by Assembly Member Portantino

February 25, 2009

An act to add and repeal Section 680.1 of the Penal Code, relating to sexual assault crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 558, as amended, Portantino. Sexual assault crimes.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses, upon the request of the victim, and subject to the commitment of resources, to inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from the case, whether or not that information has been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. Existing law also requires that the victim be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose

of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified. Existing law provides that the sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under the Sexual Assault Victims' DNA Bill of Rights is standing to file a writ of mandamus to require compliance with these notification provisions.

This bill would require local law enforcement agencies responsible for taking or ~~processing~~ *collecting* rape kit evidence to annually report to the Department of Justice statistical information pertaining to the ~~processing~~ *testing and submission for DNA analysis* of rape kits, as specified. The initial report would be due by July 1, 2012. The reports received would be subject to inspection under the California Public Records Act. These provisions would become inoperative on July 1, 2016, and would be repealed on January 1, 2017.

By imposing additional reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 680.1 is added to the Penal Code, to read:
- 2 680.1. (a) Each local law enforcement agency responsible for
- 3 taking or ~~processing~~ *collecting* rape kit evidence shall collect the
- 4 following information for rape kits collected on or after January
- 5 1, 2011:
- 6 (1) The total number of rape kits ~~received~~ *collected* during the
- 7 preceding calendar year and, of that total, the number of rape kits
- 8 for which the identity of the assailant is unknown ~~and the number~~
- 9 ~~of rape kits for which the identity of the assailant is contested.~~
- 10 (2) The total number of rape kits tested during the preceding
- 11 calendar year and, of that total, the number of rape kits for which

1 the identity of the assailant is unknown ~~and the number of rape~~
2 ~~kits for which the identity of the assailant is contested.~~

3 (3) The total number of rape kits ~~that law enforcement has~~
4 ~~requested be tested~~ *submitted for DNA analysis* and, of that total,
5 the number of rape kits for which the identity of the assailant is
6 unknown ~~and the number of rape kits for which the identity of the~~
7 ~~assailant is contested.~~

8 (4) The number of rape kits that law enforcement has ~~requested~~
9 ~~be tested~~ *submitted for DNA analysis* that remain untested and, of
10 that number, the number of rape kits for which the identity of the
11 assailant is unknown ~~and the number of rape kits for which the~~
12 ~~identity of the assailant is contested.~~

13 (5) The total number of untested rape kits *that were not*
14 *submitted for DNA analysis* in its possession as of January 1 of
15 the reporting year.

16 ~~(6) The total number of rape kits destroyed during the preceding~~
17 ~~calendar year.~~

18 (b) Each local law enforcement agency responsible for taking
19 ~~or processing~~ *collecting* rape kit evidence shall report, by July 1
20 of each year, the information collected pursuant to this section
21 during the preceding year to the Department of Justice. The initial
22 report to the department pursuant to this subdivision shall be made
23 by July 1, 2012.

24 (c) The reports received by the department pursuant to
25 subdivision (b) are subject to inspection under the California Public
26 Records Act (Chapter 3.5 (commencing with Section 6250) of
27 Division 7 of Title 1 of the Government Code).

28 (d) This section shall remain operative only until July 1, 2016,
29 and shall be repealed on January 1, 2017, unless a later enacted
30 statute, that is enacted before January 1, 2017, deletes or extends
31 that date.

32 SEC. 2. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.